

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ARLINGTON BYFIELD)	CIVIL ACTION
)	
v.)	
)	
ROBERT SHANNON, et al.)	No. 00-6174

MEMORANDUM

Padova, J.

May , 2001

The following matter arises on Petitioner Arlington Byfield's pro se Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254. On March 30, 2001, Magistrate Judge Charles B. Smith filed a Report and Recommendation that recommended denying the Petition in its entirety. On April 10, 2001, Petitioner filed timely objections to the Report and Recommendation. Respondents did not file a response to the objections. For the reasons that follow, the Court overrules Petitioner's objections, adopts the Report and Recommendation, and denies the Petition in its entirety.

I. Background

In July 1998, Arlington Byfield ("Byfield") was convicted in the Lehigh County Court of Common Pleas on charges of possession and possession with intent to deliver cocaine and marijuana. Byfield was sentenced to 71.5 months to 15 years. Upon denial of post-trial motions, he filed a direct appeal raising the following claims: (1) ineffectiveness of trial counsel for failure to file a timely motion to suppress evidence seized during allegedly illegal searches; (2) error by the trial court in denying petitioner's motion for mistrial for prosecutor's failure to turn over

information regarding an in-person identification; and (3) error by the trial court in denying petitioner's motion to dismiss pursuant to Pa. R. Crim. P. 1100 (speedy trial).

On October 13, 1999, the Superior Court denied the claims and affirmed the conviction. Petitioner did not appeal to the Pennsylvania Supreme Court within the 30-day appeal period, but on May 5, 2000, sought allowance of appeal nunc pro tunc. The Supreme Court denied him permission to file. He did not file a Post Conviction Relief Act ("PCRA") action. He filed the instant habeas Petition, pursuant to 28 U.S.C. § 2254, on December 6, 2000.

The habeas Petition asserts the following five claims:

1. The police lacked reasonable suspicion or probable cause to believe criminal activity was taking place to detain Petitioner in violation of his Fourth Amendment rights;
2. Trial counsel's failure to appear at arraignment, compounded with other errors, constituted ineffective assistance of counsel;
3. Trial counsel's failure to file a motion to suppress in a timely manner was an abdication of counsel's duty to advocate his client's case and constituted ineffective assistance of counsel;
4. Trial counsel's failure to properly pursue Petitioner's request for speedy trial constituted ineffective assistance of counsel; and
5. The prosecutor withheld requested evidence that could have helped Petitioner's case in violation of the Fourteenth Amendment to the United States Constitution.

Of these five claims, only claims two (2) and five (5) were presented to the Pennsylvania Superior Court. The remaining three are raised on this Petition for the first time. The Court will

consider each of Petitioner's objections in turn.

II. Standard of Review

Where a habeas petition has been referred to a magistrate judge for a report and recommendation, the district court "shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made. . . . [The Court] may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate." 28 U.S.C.A. § 636(b) (West 1993).

The instant Petition is governed by 28 U.S.C. § 2254, which provides in pertinent part:

(d) An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim –

(1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States . . .

28 U.S.C.A. § 2254(d)(1) (West Supp. 2000). To obtain federal habeas relief, a petitioner must demonstrate his case satisfies the condition set by § 2254(d)(1). Williams v. Taylor, 529 U.S. 362, 403 (2000). The "contrary to" and "unreasonable application" clauses are properly accorded independent meaning. Id. at 405.

A state court decision can be "contrary to" the United States Supreme Court's clearly established precedent in two ways: (1) if the state court arrives at a conclusion opposite to that reached by the United States Supreme Court on a question of law; or (2) if the state court confronts facts that are materially indistinguishable from a relevant Supreme Court precedent and arrives at an opposite result. Id. at 405 (citing Green v. French, 143 F.3d 865, 869-70 (4th Cir. 1998)).

On the other hand, a state court decision that applies the correct legal rule from the United States Supreme Court precedent to the facts of a prisoner's case does not fit comfortably within the "contrary to" clause. Id. at 406. A state court decision can involve an "unreasonable application" of the Supreme Court's precedent if the state court identifies the correct governing legal rule but unreasonably applies it to the facts of the particular state prisoner's case, or if a state court decision extends a legal principle from Supreme Court precedent to a new context where it should not apply, or unreasonably refuses to extend the principle to a new context where it should apply. Id. at 407. A federal habeas court making the "unreasonable application" inquiry should ask whether the state court's application of clearly established federal law was objectively unreasonable. Id. at 409. The federal habeas court should not grant the petition unless the state court decision, evaluated objectively and on the merits, resulted in an outcome that cannot reasonably be justified under existing Supreme Court precedent. Matteo v. Superintendent, SCI Albion, 171 F.3d 877, 890 (3d Cir. 1999). Mere disagreement with the state court's conclusions is not enough to warrant habeas relief under the "unreasonable application" clause. Id.

III. Discussion

A. Exhaustion of Claims

In the Report and Recommendation, Magistrate Judge Smith recommended denying claims one, three, and four, because they were not exhausted and are now procedurally defaulted. Petitioner objects to this recommendation. For the following reasons, the Court overrules Petitioner's objection.

The claims at issue were not exhausted because Petitioner failed to raise them in the state

courts.¹ Commonwealth v. Byfield, No. 3115 Phil. 1998 (Pa. Super. Ct. Oct. 13, 1999) (“Super. Ct. Op.”). Petitioner objects to the conclusion that his claims were not exhausted, but fails to present any argument, let alone proof, of such exhaustion. Petitioner bears the burden of demonstrating that the claims were fairly presented to the state court. Santana v. Fenton, 685 F.2d 71, 73-74 (3d Cir. 1982), cert. denied, 459 U.S. 1115 (1983). Petitioner’s only discussion in his objections is the statement that the litigant shall be deemed to have exhausted the remedies for purposes of federal habeas corpus relief by fairly presenting those claims in either the Superior Court or the Supreme Court of Pennsylvania. However, Petitioner’s exhaustion argument fails by his own statement of the law, because he failed to present those claims in either of those courts.

Furthermore, outright dismissal of these claims is proper because the claims are procedurally barred under state law.² See Carter v. Vaughn, 62 F.3d 591, 595 (3d Cir. 1995). Neither does Petitioner meet the requirements of exception to this rule, either by demonstrating cause or demonstrating that dismissal of the claims will result in a fundamental miscarriage of justice. Coleman v. Thompson, 501 U.S. 722, 750 (1991). Petitioner fails to allege or

¹Claim Four, the ineffective assistance of counsel claim based on a Sixth Amendment speedy trial violation, is a new claim that was not presented or decided at the state court level. This claim bears a resemblance to petitioner’s second direct appeal claim, in which he alleged trial error for denying his speedy trial motion under the Pennsylvania Rules of Criminal Procedure. However, to the extent that Petitioner here actually attempts to raise the same speedy trial issue that he raised in state court, this Court cannot consider the claim, because that claim was confined to an interpretation of state law. See Smith v. Phillips, 455 U.S. 209, 221 (1982); 28 U.S.C. § 2254(a).

²The final date of conviction was November 13, 1999, 30 days after the Superior Court affirmed the conviction. See Morris v. Horn, 187 F.3d 333, 337 n.1 (3d Cir. 1999); Pa. Rule App. P. 903. Petitioner had until November 13, 2000, one year from the final date of the conviction, to file a PCRA petition. See 42 Pa. Cons. Stat. Ann. § 9545(b) (West 1998).

demonstrate, either in his Petition or his objections, cause sufficient to meet the high burden under these exceptions. See Caswell v. Ryan, 953 F.2d 853, 862 (3d Cir. 1992). Under these circumstances, dismissal is appropriate. The Court therefore overrules Petitioner's objections.

B. Ineffective Assistance of Counsel for failure to file a timely motion to suppress

Trial counsel filed an untimely motion to suppress evidence seized pursuant to the search warrant. The trial court denied the motion because it was filed late. On direct appeal, the Superior Court denied the claim of ineffective assistance on the basis that the underlying claim lacked merit. On considering the issue raised in this Petition, the Magistrate concluded that the state court decision denying this claim neither was contrary to nor involved an unreasonable application of federal law as established by the United States Supreme Court. This Court agrees with the Magistrate's conclusion, and therefore overrules Petitioner's objection.

Petitioner presents a two-prong argument attacking the admissibility of the evidence. First, he alleges that he was illegally detained by police at the scene, because the police lacked reasonable suspicion or probable cause to detain him. Second, he alleges that the subsequently issued search warrant lacked probable cause because it was based on unreliable informants and lacked observations of drug sales. As a result, he contends that the evidence obtained therefrom should have been suppressed, and that trial counsel was therefore ineffective for failing to file a timely motion to suppress.

The state court concluded that the underlying claim was not meritorious under either theory. The court observed that none of the evidence in question was seized at the time of this initial detention, and that the search warrant was valid. Super. Ct. Op. at 5. The court therefore concluded that the motion was meritless, and that counsel therefore could not be deemed

ineffective. Id.

Claims of ineffective assistance of counsel are governed by Strickland v. Washington, 466 U.S. 668 (1984). To establish a Strickland claim, a petitioner must first demonstrate that his trial counsel's performance fell below an "objective standard of reasonableness." Id. at 688. The petitioner must then establish that the deficient performance prejudiced the defense. Id. at 689. More specifically, the petitioner must demonstrate that "there is a reasonable probability that, but for counsel's errors, the result of the proceeding would have been different." Id. at 687. Counsel cannot be deemed ineffective for failing to raise meritless claims. Mahony v. Vaughn, Civ. Act. No. 00-606, 2001 U.S. Dist. LEXIS 428, at *6 (E.D. Pa. Jan. 19, 2001).

The state court's determination that Petitioner's first argument was meritless was not contrary to or an unreasonable application of federal law. Though evidence obtained as the direct result of an unconstitutional search or seizure is subject to exclusion, Segura v. United States, 468 U.S. 796, 804 (1984), exclusion would not be appropriate here. The evidence was seized not upon the allegedly illegal arrest, but upon the execution of the subsequently issued search warrant. The warrant, however, was based upon an affidavit of probable cause that did not depend on any information obtained as a result of Petitioner's detention. See Affidavit (attached as unmarked Exhibit to Pet.) As the Superior Court noted, the officer "relied upon information obtained the previous day from interviewing the other subjects at the scene, and the verification of witnesses that [petitioner] was [their drug dealer] and that he had drugs upstairs." Super. Ct. Op., at 4. In this case, the state court's conclusion that the motion likely would have been denied was not contrary to or an unreasonable application of federal law. Counsel cannot, therefore, be

deemed ineffective for failing to raise a meritless claim.³

Neither was the state court's rejection of Petitioner's second argument contrary to nor an unreasonable application of federal law. Petitioner contended that the search warrant lacked probable cause. The affidavit, which included conversations with three different individuals regarding drug sales, provided sufficient probable cause for the search. However, even if probable cause was lacking, when an officer acting with "objective good faith" obtains a search warrant from a judge or magistrate and acts within the scope of the warrant, suppression of the evidence seized during the search is not generally appropriate. United States v. Leon, 468 U.S. 897, 906 (1984). The Court agrees with the Magistrate's conclusion denying this second aspect of his claim.

For these reasons, the Court agrees with the reasoning and conclusion in the Report and Recommendation. The initial detention, even if illegal, did not result in seizure of any of the evidence, either directly or through information provided to obtain the search warrant. Thus, the exclusion doctrine has no application, and so there would be no basis to suppress the evidence seized. Trial counsel therefore could not be ineffective for failing to file a timely motion. Petitioner's objection is overruled.

C. Prosecutorial Withholding of Evidence

Petitioner claims that the Commonwealth withheld mandatory discovery materials,

³Neither can it be said, under these circumstances, that under the first prong of Strickland, trial counsel's performance constituted "gross incompetence." See Kimmelman v. Morrison, 477 U.S. 365, 382 (1986); Buehl v. Vaughn, 166 F.3d 163, 169 (3d Cir.), cert. denied, 527 U.S. 1050 (1999) ("Because counsel is afforded a wide range within which to make decisions without fear of judicial second-guessing, we have cautioned that it is 'only the rare claim of ineffectiveness that should succeed under the properly deferential standard to be applied in scrutinizing counsel's performance.'")

relative to the identification of the defendant, in violation of Pennsylvania Rule of Criminal Procedure 305 and the Fourteenth Amendment. At trial, Officer Cruz (the arresting officer) testified as follows:

Q. At any rate you spoke to the defendant?

A. Correct.

Q. What did you ask the defendant?

A. I asked - first, I called him Cartel. And, of course, in our job you look for any kind of motion. And as soon as I stated, Cartel, the defendant started to turn, stopped . . .

N.T. 7/27/98 at 115-17. Defense counsel objected and moved for mistrial, on the basis that one of the key contentions of the defendant was that he was not Cartel, and that the testimony was a prior identification. Under the Pennsylvania Rule of Criminal Procedure, a mistrial is justified for failure of the government to turn over information regarding prior identifications. Pa. R. Crim. P. 305(B)(1)(d). The trial court overruled the objection and denied the motion.

The Pennsylvania Superior Court concluded that the testimony did not involve an identification; rather, it was testimony as to cumulative evidence of the identification of the defendant. Super. Ct. Op. at 7. Further, under state law, the court concluded that even if it was identification, the error would be harmless. Id. at 7-8. The Magistrate concluded that the claim should be denied because the prosecutor did not have a duty to disclose the evidence pursuant to Brady v. Maryland, 373 U.S. 83 (1963). Rept. & Rec. at 20.

Petitioner objects to the recommendation to deny the report on the basis that Pennsylvania Rule of Criminal Procedure 305(B)(1)(d) “makes it mandatory for the Commonwealth to provide

in discovery” the results from the identification. The Court overrules this objection. As the Magistrate noted, the habeas court cannot review state court decisions regarding state law. Rep. & Rec. at 19 n.11 (citing Smith v. Phillips, 455 U.S. 209, 221 (1982)). Thus, this Court cannot review a state court decision denying the claim on the basis of an interpretation of state law. Furthermore, the Court agrees with the conclusion that the claim lacks merit under federal law as articulated in the Report and Recommendation.

III. Conclusion

For the reasons stated, the Court overrules each of Petitioner’s objections to the Magistrate’s Report and Recommendation. The Court adopts the Report and Recommendation in its entirety, and denies the instant Petition for writ of habeas corpus. An appropriate Order follows.